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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re China XD Plastics Company Limited Securities Litigation

ORDER

14-cv-05308 (GBD)

GEORGE B. DANIELS, United States District Judge:

On May 6, 2016, Plaintiff filed a motion for leave to amend the Complaint, attaching a Proposed Amended Complaint (ECF No. 50). "Proposed amendments are futile if they would fail to cure prior deficiencies or to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure." *IBEW Local Union No. 58 Pension Trust Fund & Annuity Fund v. Royal Bank of Scotland Grp.*, 783 F.3d 383, 389 (2d Cir. 2015) (internal citations and quotations omitted).

This Court previously found that, among other deficiencies, Plaintiff failed to meet its Rule 12(b)(6) pleading burden with regard to scienter. (*See* March 22, 2016 Order granting Defendants' motion to dismiss the Complaint, ECF No. 45, at 13-14 n.17.) Plaintiff has not augmented a single one of its allegations with regard to scienter. (*See* Proposed Amended Complaint ¶¶ 119-123.) Instead, Plaintiff argues that by amending the Class Period to include the bond offering—the completion of which Plaintiff argues gave rise to Defendants' motive to overstate financials—it has addressed the scienter deficiency. (Motion for Leave to Amend, ECF No. 50, at 10 n.7.) This argument is unavailing. Even considering Plaintiff's argument, the Proposed Amended Complaint still fails to "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind" as to each alleged false statement. 15 U.S.C. § 78u-4(b)(1)-(2). Accordingly, Plaintiff's motion for leave to amend the Complaint is DENIED as futile.

On August 8, 2016, Plaintiff filed a motion to strike (ECF No. 59) certain documents attached to Defendants' opposition to Plaintiff's motion for leave to amend the Complaint. However, the Proposed Amended Complaint is futile on its face, *i.e.*, without consideration of any of the disputed documents attached to Defendants' opposition papers. Thus, Plaintiff's motion to strike those documents is DENIED as moot.

The Clerk of Court is instructed to close the motions at ECF No. 50 and ECF No. 59.

SO ORDERED.

MAR 08 2017

Dated: March __, 2017
New York, New York

George B. Daniels

GEORGE B. DANIELS
United States District Judge